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Prelude to Independence: The Virginia Resolutions of May 15, 1776

Address delivered at the Old Capitol in Williamsburg on the one hundred and seventy fifth anniversary of the passage of the Virginia Resolutions

Samuel Eliot Morison*

I AM highly sensible of the honor you have done me, a New England historian, to choose me to be your speaker on this great anniversary; although I fear lest the choice of the likes of me may cause my old friend President Lyon Gardiner Tyler of the College of William and Mary to turn in his grave. Yet I cannot find a better theme for my discourse than the words of another New England Yankee, a friend and contemporary of Thomas Jefferson, Elbridge Gerry. In a letter written on the eve of the meeting of the Virginia Convention he wrote to James Warren of Boston: "Virginia is always to be depended upon."

He had the highest expectation of that remarkable body of men assembled here in the House of Burgesses, and he was not disappointed. It was officially styled the Convention of Delegates held at the Capitol in the City of Williamsburg in the Colony of Virginia; but its purpose was to decide whether Virginia would remain a colony or become an independent republican state. General Charles Lee—not one of the Virginia Lees—who was stationed here at the time, wrote to General Washington on May 10, 1776, "A noble spirit possesses the Convention. They are almost unanimous for independence. . . . Two days will decide it."¹ And five days did decide it. You have just heard the text of their resolve. That resolve was received by the Continental Congress with thankfulness and admiration. It was on May 1 that Elbridge Gerry had written, "Virginia is always to be depended upon; and so fine a spirit prevails among them that, unless you send some

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¹ Edmund C. Burnett, *Letters of the Members of the Continental Congress* (Washington, 1921-1936), I, 460n.

of your cool patriots among them, they may be for declaring Independency before Congress is ready."²

It was high time that something be done. The United Colonies had been fighting the royal armies for thirteen months. Full-fledged war had been going on for over a year. Bunker Hill, a bloody and desperate battle by any standard, was fought eleven months before the Virginia Convention met. General Washington had been commander-in-chief of the armed forces of the United Colonies for over ten months before the Virginia Convention met. The Grand Union Flag had been flown over Washington's command post for four months before the Virginia Convention met. In the summer of 1775 Congress authorized the military expedition against Canada—an offensive operation if there ever was one; they created a Continental Navy and Marine Corps and sent forth an armed fleet and landing force under Commodore Whipple which made a successful amphibious assault on Nassau in the Bahamas. In Virginia, too, there had been civil war for over a year before the Convention met. In early December, 1775, Colonel Woodford defeated the Tories and Royal Marines at the Battle of the Great Bridge; and Governor Lord Dunmore was still on board the frigate *Fowey* in Hampton Roads when this Convention assembled.

Yet all this time, the colonists while fighting the soldiers of King George maintained that they were loyal subjects of King George. "After all, my friend," John Adams wrote to James Warren, April 22, 1776, "I do not at all wonder that so much reluctance has been shown to the measure of independency. All great changes are irksome to the human mind, especially those which are attended with great dangers and uncertain effects. No man living can foresee the consequences of such a measure. . . . We may please ourselves with the prospect of free and popular governments, but there is great danger that these governments will not make us happy. God grant they may! But I fear that in every Assembly members will obtain an influence by noise, not sense; by meanness, not greatness; by ignorance, not learning; by contracted hearts, not large souls. . . ."³ And only a few days later Richard Henry Lee wrote to General Charles Lee, who had been irritated by some of the criticisms of him in Congress:

² *Ibid.*, I, 438.

³ Samuel Eliot Morison, ed., *Sources and Documents Illustrating the American Revolution, 1764-1788, and the Formation of the Federal Constitution* (Oxford, 1929), 147.

“You know, my friend, that the Spirit of Liberty is a jealous spirit, and that Senators are not always wise and candid, but that frequently they are governed by envy, enmity and a great variety of bad passions.”⁴ So if these two leading advocates of American Independence could feel such qualms on the very eve of independence, is it a wonder that the majority of Americans hung back? And most of all, the gentlemen of Virginia?

With the economic issue, they were not greatly concerned, although all were suffering from a year’s non-trading with England. In terms of cold-blooded economics one could argue that the English connection was very profitable to Virginia, and one could argue that it was not, that Independence would not only wipe out the vast debts due from Virginia planters to British merchants but would open new markets to Virginian tobacco and grains. But as far as the record goes, the Virginians did not weigh such considerations. They decided the question of independence entirely on political, philosophical and emotional grounds.

In the Old Dominion every man, woman and child had been brought up to fear God and honor the King. Many of the older men, and their fathers and grandfathers before them, had fought for the King; some of their ancestors had even fought for King Charles; and while the word Revolution was respectable in 1776 because of the “Glorious Revolution of 1688,” the word Republic was not. Republic, to Americans of 1775, meant almost what Communism does to us. “The abilities of a child might have governed this country,” wrote Oliver Wolcott of Connecticut, “so strong has been their attachment to Britain.”⁵ But by the same token the Americans were heirs to English liberty; they would not, could not accept any second-rate status in the English empire—and they had read in their well-thumbed Algernon Sidney and John Locke that if a Prince breaks his implied compact with his people, it is their right, their duty, to resist. With all these historic memories of their English past, in which love of liberty and loyalty to the crown were mingled, memories of Runnymede as well as Agincourt; Flodden Field as well as Marston Moor, the Bill of Rights as well as the Declaration of Breda, Braddock’s defeat as well as the Plains of Abraham—what were Virginians to do? Break with all their past, separate themselves from that splendid growth of the English Constitution “broadening down from precedent to precedent”? It took imagi-

⁴ Burnett, *Letters of Members of Continental Congress*, I, 442.

⁵ *Ibid.*, 449.

nation such as few save Jefferson had to see a vision of free states in a federal republic, with freedom and justice for all. The rest feared that if the restraining hand of custom and loyalty were withdrawn, confusion, discord and anarchy might ensue. And, asked many, supposing Independence were desirable, could it be won against the will of the greatest empire on earth? The Thirty Years' War was not much further back from that generation than the Civil War is from us; and the one, like the other, was an awful example of what happens to a country in a bitter civil war.

So I ask you young people who are so torn today between duty and expediency; seeking a way out between the horror of another World War and the ignominy of submitting to Communism, I ask you to remember that our forebears of 1775-1776 were in the same quandary and that they too sought a way out, in which they were ahead of their time—Dominion Status; but when the British government refused to accept that, they had to choose between submission and independence. Theirs, I believe, was the greater agony and the more difficult choice; for while *we* merely have to choose between defending the liberties that our forefathers won, or letting them go through cowardice or neglect; *they* either had to submit to the insulting conditions demanded by the British crown, or embark on the uncharted sea of Independence. We are called on to make sacrifices, great sacrifices, for what we have and hold; they were called upon to make equal if not greater sacrifices for an untried thing, an untested ideal—American Republic.

And don't think these men of 1775-1776 were any older or more experienced than many of you. George Washington, when he took command of the American Army, was only 43; Richard Henry Lee and John Blair, who represented the College of William and Mary in this Convention, were of the same age; Patrick Henry, when this Convention met, was not yet 40; James Mercer was just 40; Thomas Jefferson was 33 when he wrote the Declaration of Independence. James Madison was not yet 25 when he sat in this Virginia Convention; Edmund Randolph was not yet 23 when he took his seat in this body.

But more important than the ages were the characters and standing of the delegates. George Washington's brother John Augustine Washington, four years his junior, was one of the delegates; the Lee family was represented by "Light horse Harry" from Prince William County; Thomas Ludwell Lee and Richard Lee. William Fitzhugh and Richard Bland represented King George County; Thomas Nelson, Jr., York; George

Mason of Gunston Hall emerged from his retirement to represent Fairfax County; Edmund Pendleton and James Taylor, Caroline; Archibald Cary, Chesterfield. Almost all the old Virginia names were there, and many new ones which would be known in the future. And, as the historian Henry Adams wrote sixty years ago, those Virginians "were equal to any standard of excellence known to history. Their range was narrow, but within it they were supreme."⁶

Edmund Pendleton, elected president of the Convention, addressed it in part, as follows:—

Gentlemen:

We are now met in General Convention at a time truly critical, when subjects of the most important and interesting nature require our serious attention. . . .

Several resolutions of Congress and letters from our delegates I am directed by the Committee of Safety to lay before you.

In the discussion of these, and all other subjects which may come under our consideration, permit me to recommend calmness, unanimity and diligence, as the most likely means of bringing them to a happy and prosperous issue.⁷

The Rev. Thomas Price was appointed chaplain to the Convention and ordered to read prayers every morning at nine, and also to preach in the Bruton Parish Church on the 17th, a day appointed by the Continental Congress for fasting and prayer—for the very good reason that the then incumbent of Bruton parish, the Rev. Mr. Camm, was a Tory. Thirteen hundred minute-men and militia were ordered raised to go to the assistance of the patriots in North Carolina. A petition from Augusta County in the Valley was read, "setting forth the present unhappy situation of the country, and, . . . representing the necessity . . . of framing an equal, free and liberal government that may bear the test of all future ages."

A petition from the County of Buckingham was read, "We instruct you to cause a total and final separation from Great Britain to take place as soon as possible."⁸ These and other local petitions of the same tenor were referred to a large Committee on the State of the Colony, Archibald Cary chairman.

And now came word from England that converted many of the

⁶ Henry Adams, *History of the United States of America* (New York, 1890-1898), I, 133.

⁷ *Proceedings of the Convention of Delegates* (1816 edition), 8.

⁸ George Bancroft, *A History of the United States* (Boston, 1858-1875), VIII, 376.

wavering to Independence. This was the news that 12,000 Hessian mercenaries were already at sea, destined to reinforce the royal armies in America and put down the rebellion.⁹ There had been rumors about this before; but here was concrete evidence, to use the words of the Declaration of Independence, that the King was “transporting large armies of foreign mercenaries to compleat the works of death, desolation and tyranny already begun with circumstances of cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.” Only an out-and-out Tory could be loyal to the King after that.

On Wednesday the 15th of May, Archibald Cary for the Committee reports the Resolution that you have just heard, instructing the Virginia delegates in Congress “to declare the United Colonies free and independent states, absolved from all allegiance to or dependence upon the Crown or Parliament of Great Britain.” It passes, *nemine contradicente*. Immediately following, the Convention resolves unanimously to approve a committee to prepare a Declaration of Rights, and a plan of government “as will be most likely to maintain peace and order in the Colony, and secure substantial and equal liberty to the People.”

This committee was a very large one—thirty-two men representing all parts of Virginia; and as usual in such large committees, a very few did all the work. Most important of the members of the committee was George Mason of Gunston Hall. “Colonel Mason seems to have the ascendancy in the great work,” wrote Pendleton to Jefferson.¹⁰ At the age of 51 Mason was regarded as a sort of Grand Old Man in Virginia. He loved country life, hated politics and despised politicians, especially Patrick Henry; but his sense of duty was so great that when called forth he always came and although his aristocratic contempt for the general run of mankind made him disliked, his theoretical democracy, his intellect and character always won him respect. From Philadelphia Thomas Jefferson sent trial drafts of a state constitution which were used with Mason’s to complete the Frame of Government adopted June 29; but it was George Mason who drafted the Declaration of Rights, adopted June 12, that preceded the Constitution of the Commonwealth.

⁹ Herbert Friedenwald, *The Declaration of Independence* (New York, 1904), 67, 90.

¹⁰ May 24, 1776. Julian P. Boyd, ed., *The Papers of Thomas Jefferson* (Princeton, 1950-), I, 296.

This Virginia Declaration of Rights as it was officially named, or Bill of Rights as it is generally called, is one of the great documents of all time. Based on Natural Law, it boiled down the experience of freeborn Englishmen in the past; and it was the parent of the Bills of Rights of the rest of the Thirteen States, of the Federal Government in 1791, of the French Declaration des Droits de l'Homme of 1789; and of innumerable later charters, including that of the United Nations, which have attempted to define the basic rights of man which no government or official may infringe.

The Virginia Declaration of Rights begins:

That all men are by nature equally free and independent, and have certain inherent rights of which, when they enter into a state of society, they cannot . . . deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety."

John Locke had written "Life, liberty and property." Mason added "the pursuit of happiness and safety." Jefferson, younger and more radical, cared little for safety (security, as we call it); he defined the first of mankind's inalienable rights as "life, liberty and the pursuit of happiness." What a felicitous summary! For the "pursuit of happiness" includes everything else. It is the most precious right that we inherit—the one which we should most fiercely defend, the right to the pursuit of happiness. We may never attain happiness. We may enjoy it for but a few brief moments. Our happiness can never be perfect in this world. But the pursuit of it—the right to mind our own business, to follow our own tastes and inclinations, the inestimable privilege of doing what we feel God has given us to do; that is the secret of the good life. And, like those other inalienable rights, it is one that no totalitarian state respects; for the totalitarian state says, "I tell you what you can do; and you'd better be happy, or else!"

Some of the clauses of Mason's Bill of Rights come straight out of Magna Carta—the right to a jury trial, the right not to be deprived of liberty except by the law of the land or the judgment of one's peers. Others come from the Petition of Right with which Charles I had been confronted in 1628: that a man cannot be compelled to give evidence against himself, that standing armies in peace time should be avoided as dangerous to liberty, "and that in all cases the military should be under strict subordination to and governed by the civil power." Others were derived from the

Bill of Rights of 1689 which concluded the "Glorious Revolution" that brought in William and Mary; a prohibition to the executive to suspend laws in favor of individuals; prohibition of excessive bail and of cruel and unusual punishments. And still others were developments from principles merely hinted at before, such as freedom of the press, and religious liberty. In the committee's original draft presented to the Convention, the latter was a mere grant of religious toleration; but young James Madison of Orange County rose up and declared that toleration was not enough; it smacked of condescension on the part of a state church. It was at his suggestion that the Virginia Bill of Rights declares "All men are equally entitled to the free exercise of religion, according to the dictates of conscience," coupling with it the corresponding duty "to practise Christian forbearance, love and charity towards each other."¹¹

And those Rights were valid, not merely because they were derived from American and English experience, but because they were based on the ancient theory of Natural Law, the Law of Nature, the principle common to all western civilizations that laws must have Divine sanction. In this respect the Virginia Bill of Rights harks back to ancient Greece. In Sophocles' *Antigone* (Line 450, Loeb edition) the tyrant Creon says: "And thou didst dare to violate the law?" Antigone replies:

Yea, for thy laws were not ordained of Zeus,
 And Justice, who sits high among the Gods,
 Has naught to do with unjust laws of men.
 Nor did I think that thou, a mortal man,
 Had pow'r to declare both null and void
 Th' unchangeable, unwritten laws of Heaven.
 They were not born today nor yesterday.
 They die not, and none knoweth whence they sprang.

These "unchangeable, unwritten laws of Heaven" must be the foundation of all human enactments which are to endure; this concept of law, through the genius of George Mason, became the foundation of the American constitutional system. As a great historian, George Bancroft, wrote in his *History of the United States* (VIII, 383), "Virginia moved from charters and customs to primal principles; from a narrow altercation [of] from lawyers to the contemplation of immutable truth. . . ."

¹¹ Morison, *Sources and Documents*, 149-151.

The Declaration of Rights was followed by the Frame of Government, adopted June 29; so Virginia may claim to have been a free and independent commonwealth three days before the United States in Congress Assembled declared their independence.

Other colonies had been ahead of Virginia in giving their delegates in Congress power to vote for Independence, but the Virginia Convention was the first to *order* its delegates to *propose* Independence.¹² That, coupled with the fact that Virginia was the oldest, most populous, wealthy and famous of the Continental Colonies, gave the Virginia Resolves their peculiar significance; to which their perfect timing, in relation to events, added an extra pull.

"[By] every Post and every day, Independence rolls in on us like a torrent," wrote John Adams on May 20. "The delegates from Georgia made their appearance this day in Congress with unlimited powers [for Independence]. South Carolina has evicted her governour and given her delegates ample powers. . . . North Carolina have given theirs full powers. . . . This day's post has brought a multitude of letters from Virginia, all of which breathe the same spirit."¹³

On the 27th the Virginia Resolutions were read in Congress. The Virginia Delegation was ready to comply.

These United Colonies are, and of right ought to be, free and independent states, that they are absolved from all allegiance to the British Crown, and that all political connection between them and the State of Great Britain is and ought to be totally dissolved.¹⁴

Congress appointed a committee of five to prepare a Declaration of Independence. The Committee entrusted the drafting of the Declaration to its youngest member, Thomas Jefferson. They reported on the 28th; the Declaration was discussed clause by clause, and very slightly modified. On July 2, the Great Decision was made; Richard Henry Lee's Resolution of Independence was unanimously adopted; and on the Fourth the Declaration itself was accepted.

I have given you the bare sequence of events by which the Virginia Resolutions of 175 years ago led, on the one hand, to the great Declaration that gave Independence to America; and on the other, to the Virginia

¹² Friedenwald, *Declaration of Independence*, 97.

¹³ Burnett, *Letters of Members of Continental Congress*, I, 460.

¹⁴ Carl L. Becker, *The Declaration of Independence* (New York, 1945), 3.

Declaration of Rights. And these are of equal importance, for if Independence had not been won by a seven years' war, the Declaration of Rights would have been waste paper; whilst if Independence had been won without these safeguards to Liberty, it would have been of doubtful benefit. Jefferson himself admitted this. As he wrote to one of the Convention, Thomas Nelson, on May 16, 1776, Constitution making "is the whole subject of the present controversy; for should a bad government be instituted for us in future, it had been as well to have accepted . . . the bad one offered to us from beyond the water, without the risk and expense of conflict."¹⁵

A great English historian, Lord Acton, has well summed up the effect on the world of the Virginia Declaration of Rights: "It was from America that the plain ideas that men ought to mind their own business, and that the nation is responsible to Heaven for the acts of the State—ideas long locked in the breast of solitary thinkers and hidden among Latin folios—burst forth like a conqueror upon the world they were destined to transform, under the title of the Rights of Man. . . . In this way the politic hesitancy of European statesmanship was at last broken down; and the principle gained ground, that a nation can never abandon its fate to an authority it cannot control."¹⁶

Thus Virginia summoned the eternal laws of Nature to protest against all tyranny.¹⁷ Her voice went forth to bring a new Republic into being.

And so I close, where I began, with the prophetic words of Elbridge Gerry of Massachusetts:—"Virginia is always to be depended upon."

¹⁵ Boyd, *Papers of Thomas Jefferson*, I, 292.

¹⁶ Lord John Acton, *History of Freedom and Other Essays* (London, 1907), 55-56.

¹⁷ Bancroft, *History of the United States*, VIII, 383.